A

Harun bin Abdullah v Public Prosecutor

B

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-09–34 OF 2006
SURIYADI, WAN ADNAN MUHAMAD AND AHMAD MAAROP JJCA
27 NOVEMBER 2008

C

Evidence — Statement — Cautioned statement — Whether cautioned statement used in another case could be reused in present case — Whether conviction could still be sustained without cautioned statement

D

The appellant, an officer who was in charge of arms licence dealings at the Ibu Pejabat Polis Daerah Kuala Selangor, was charged for forging a security licence to purchase a piece of firearm and ammunitions and fraudulently authorising the transfer of the ownership of a weapon to Ng Yah Hai (PW2) the principal prosecution witness. The appellant was found guilty under s 467 together with s 471 of the Penal Code. On appeal the appellant argued that there was an agreement between the appellant and the prosecution that the parties would be bound by the decision of this court in another case ('the first case') where the appellant faced a distinct charge of forging a firearm license for a different person. The appellant's conviction in the first case was set aside due to the error of the trial judge regarding the required standard of proof at the end of the prosecution stage. Following that, the appellant alleged that the prosecution by virtue of its agreement had renege its agreement by proceeding with the charge and was thus estopped from proceeding further. The prosecution argued that even if there was an agreement as alleged by the appellant, s 115 of the Evidence Act 1950 ('the Act') relating to estoppel would not be applicable in criminal cases. The appellant further argued that (i) with his acquittal in the first case the cautioned statement could not be used again on the basis of the principle of res judicata; (ii) PW2 was an accomplice whose evidence was unreliable and unworthy of credit.

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Held, dismissing the appeal on conviction and sentence:

I

(1) The prosecution in the first case was conducted by a police officer and he had no authority to decide whether a case ought to be withdrawn or otherwise. No evidence was adduced by the appellant to establish that the prosecuting officer had been ordered to state all that had been suggested by the appellant (see para 12).

(2) A criminal trial, which invariably is conducted in open court, certainly falls within the ambit of judicial proceedings, let alone it is not a trial conducted by affidavits or presided by an arbitrator. On that premise, with it falling squarely within the folds of the terms 'judicial proceedings', it must follow that s 115 of the Act is equally applicable to criminal trials. That criminal trial likewise will fit equally comfortably under the terminology of 'proceedings' as legislated in s 115 of the Act. Excluding the restrictions of s 2 of the Act, which are irrelevant to criminal proceedings, there are no identifiable provisions in the Act that state that the principle of estoppel in the context of s 115 of the Act shall be inapplicable to criminal proceedings (see para 18).

(3) The cautioned statement was merely part of the prosecution's chain of evidence, adduced in the course of the first case and involved no judicial determination of it, except of its applications in the trial within a trial. Hence, there was no error to disentitle the court from using the same cautioned statement, as a separate trial within a trial was carried out for the current case, and which already had been held to be admissible (see para 21).

(4) The credibility of PW2 had not been successfully discredited, and therefore, his evidence remained good. The charge against the appellant was forgery and not cheating PW2 and as such there was no requirement of corroboration. PW2 was not an accomplice, for the charge against the appellant was one of forging or falsifying the specific document, of which at all relevant times was well within the custody and knowledge of the appellant and none others. Having sifted the evidence, no evidence was found to show that the High Court's judge's factual finding on this issue was erroneous (see paras 27, 29).

[Bahasa Malaysia summary

Perayu merupakan pegawai yang bertanggungjawab terhadap urusan perlesenan senjata api di Ibu Pejabat Polis Daerah Kuala Selangor, dituduh dengan tuduhan memalsukan lesen keselamatan untuk membeli satu senjata api dan peluru dan secara fraud memberi kebenaran untuk pindah milik pemunyaan sebuah senjata kepada Ng Yah Hai (PW2), saksi utama pendakwaan. Perayu didapati bersalah di bawah ss 467 dan 471 Kanun Keseksaan. Ketika rayuan, perayu berhujah bahawa adanya perjanjian antara perayu dan pihak pendakwa bahawa pihak-pihak tertakluk kepada keputusan mahkamah ini untuk kes yang lagi satu (kes pertama) di mana perayu dihadapkan dengan tuduhan memalsukan lesen senjata api yang berbeza kepada orang lain. Sabitan perayu dalam kes yang pertama diketepikan kerana kesilapan hakim bicara berkaitan dengan keperluan standard pembuktian pada akhir kes pendakwaan. Berikutan ini, perayu menyatakan

A bahawa pihak pendakwa, menurut perjanjian tersebut, telah mungkir apabila dia meneruskan dengan pertuduhan tersebut dan oleh itu di estop dari meneruskan prosiding tersebut. Pihak pendakwa berhujah bahawa walau sekiranya wujud perjanjian yang dikatakan oleh perayu, s 115 Akta Keterangan 1950 ('Akta tersebut') berkaitan dengan estopel tidak diterima B pakai dalam kes-kes jenayah. Perayu seterusnya menyatakan bahawa (i) apabila dia dibebaskan dalam kes pertama, pernyataan beramaran itu tidak boleh digunakan sekali lagi atas prinsip res judicata; (ii) PW2 merupakan rakan jenayah dan keterangannya tidak boleh diterima pakai dan meragukan.

C

Diputuskan, menolak rayuan terhadap sabitan dan hukuman:

(1) Dalam kes pertama, pendakwaan dijalankan oleh pegawai polis dan dia tidak mempunyai kuasa untuk menentukan sama ada suatu kes itu D seharusnya ditarik balik atau pun tidak. Tiada keterangan dikemukakan oleh perayu untuk membuktikan bahawa pegawai pendakwa itu diarahkan untuk menyatakan kesemua apa yang dikatakan oleh perayu (lihat perenggan 12).

E (2) Suatu perbicaraan jenayah yang biasanya dijalankan di mahkamah terbuka, tentunya merupakan suatu prosiding kehakiman, apatah lagi ini merupakan perbicaraan tanpa afidavit-afidavit atau diketuai oleh timbangtara. Berdasarkan pernyataan tersebut, yang menjadikan perbicaraan itu terangkum dalam maksud 'prosiding kehakiman', maka F s 115 Akta terpakai juga dalam perbicaraan-perbicaraan jenayah. Perbicaraan jenayah membawa maksud 'prosiding' seperti yang ditafsirkan di bawah s 115 Akta. Tanpa mengambilkira sekatan-sekatan di bawah s 2 Akta tersebut, yang tiada bersangkutan dengan prosiding jenayah, tiada satu pun peruntukan dalam Akta tersebut yang G menyatakan bahawa prinsip estopel dalam konteks s 115 Akta tidak boleh diguna pakai dalam prosiding jenayah (lihat perenggan 18).

(3) Pernyataan beramaran itu hanya merupakan sebahagian daripada rantaian keterangan pihak pendakwa, dikemukakan daripada rintisan H kes pertama dan tidak melibatkan penentuan kehakiman kes itu, kecuali dalam guna pakainya dalam perbicaraan dalam perbicaraan. Oleh itu, tiada kesilapan yang boleh membuatkan mahkamah tidak dibenarkan menerima pernyataan beramaran yang sama, kerana suatu perbicaraan dalam perbicaraan yang berasingan telah dilaksanakan I untuk kes ini, dan telah diputuskan bahawa pernyataan beramaran tersebut boleh diterima pakai (lihat perenggan 21).

(4) Kebolehpercayaan PW2 tidak berjaya digoyah dan itu menjadikan keterangannya masih terpakai. Pertuduhan terhadap perayu merupakan pertuduhan pemalsuan dan bukannya menipu PW2. Maka, keterangan

PW2 tidak perlu disokong. PW2 bukannya rakan sejenayah kerana pertuduhan terhadap perayu merupakan pertuduhan memalsukan dokumen yang spesifik, yang mana, berada dalam pengetahuan dan milikan perayu pada setiap masa dan bukannya orang lain. Setelah meneliti keterangan-keterangan, tiada satu pun yang menunjukkan bahawa penemuan fakta oleh hakim Mahkamah Tinggi dalam perkara ini, salah (lihat perenggan 27, 29).]

Notes

For cases on cautioned statement, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2385–2402.

Cases referred to

Arulpragasan a/l Sandaraju v PP [1997] 1 MLJ 1; [1997] 1 AMR 329, FC (refd)

Harun bin Abdullah [1998] 3 MLJ 1; [1998] 2 AMR 1983, CA (refd)

Sambasivam v The PP, Federation of Malaya [1950] MLJ 145, PC (refd)

Legislation referred to

Evidence Act 1950 ss 2, 115, 133

Penal Code ss 467, 471

Karpal Singh (Sangeet Kaur Deo with him) (Karpal Singh & Co) for the appellant.

Mangaikarasi a/p Krishnan (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Suriyadi JCA (delivering judgment of the court):

[1] In this case the accused was indicted with the following charge:

Bahawa kamu pada 9/1/90 di Lot 663, Jalan Kelinik di daerah Kuala Selangor dalam Negeri Selangor telah memalsukan cagaran bernilai iaitu satu lesen membeli senjatapi dan peluru siri no B113824 memberi kuasa pemindahan palsu hakmilik suatu senjatapi kepada Ng Yah Hai kp no 4103299 dan dengan curangnya menggunakan cagaran berharga palsu tersebut sebagai satu cagaran berharga yang sah yang kamu ada sebab mengetahui ia adalah palsu dan dengan itu kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 467 Kanun Keseksaan dibaca bersama dengan Seksyen 471 Kanun Keseksaan.

[2] Loosely translated the appellant on 9 January 1990 at Lot 663, Jalan Kelinik in the District of Kuala Selangor in the State of Selangor had forged a valuable security ie a licence (No B 113824) to purchase a piece of firearm and ammunitions and fraudulently authorising the transfer of ownership of a weapon to one Ng Yah Hai, identity card No 4103299, an offence

punishable under s 467 of the Penal Code read together with s 471. The trial judge found him guilty of the above charge. Being dissatisfied with the outcome the appellant filed an appeal at the High Court but failed. This was followed by an appeal to the Court of Appeal but this panel had unanimously dismissed it. We now lay down our reasons for the dismissal.

ANTECEDENTS BEFORE US

[3] At the outset, counsel for the appellant was at pains to drive the point that an agreement existed between the appellant and the prosecution, in that parties would be bound by whatever decision that will be handed down by the Court of Appeal in another case (to be referred to as *the first case*), which also concerned the appellant. In that *first case* he likewise faced a distinct charge of forging a licence but in relation to a different person. Due to the error of the trial judge regarding the required standard of proof at the end of the prosecution stage the Court of Appeal freed him.

[4] Despite the supposed agreement, and after the acquittal, the appellant alleged that the deputy public prosecutor did not honour it as the latter still proceeded with the charge of this appeal. According to the alleged agreement the latter would abide by the outcome of the appeal and by reason of that undertaking was estopped from proceeding further. The appellant had *also* canvassed that the charge in this appeal ought not to have been proceeded with as parties had agreed that further hearing be adjourned pending the outcome of the appellant's appeal in the Court of Appeal of the first case against the appellant.

[5] The prosecution had denied the existence of the above said agreement with the exception of agreeing with the adjournment. Despite the denial by the prosecution of the existence of the agreement the learned judge concluded that an agreement did actually take place *but limited to allowing an adjournment of the trial on the particular appointed date*. The learned judge further opined that upon the appellant conceding to enter his defence albeit by way of the unsworn statement from the dock, the appellant had thus waived the terms of the said agreement. How the learned judge arrived at the conclusion that an agreement had been sealed between them, though limited to the issue of adjournment, and how he reconciled the agreement with the concession to have the defence called, was unclear and confusing to us.

[6] At p 280 of the records of appeal (Volume I) the learned judge in his grounds of judgment had authored:

> In our case today, albeit no such terms of the said agreement recorded in the notes of proceeding save for some mention of the same in the judgment of the learned sessions judge, I am of the view that the said agreement or concession did actually take place. It must be so, for it would not have otherwise be so mentioned in the judgment …

[7] Perusing the above excerpt from the ground of judgment it was obvious that the learned judge concluded that an agreement existed just because it was mentioned in the trial judge's judgment. Nothing was said whether the learned judge had personally perused the notes of proceedings of the trial judge or not. Let us now see what the learned sessions court judge actually said:

> … Malahan pada satu peringkat, perbicaraan ini ditangguhkan atas permohonan kedua kedua belah pihak atas alasan bahawa pihak-pihak bersetuju terikat dengan apa-apa keputusan yang akan diberikan oleh Mahkamah Rayuan. Walau bagaimanapun setelah Mahkamah Rayuan memberikan keputusan, pihak pendakwa ingin meneruskan tuduhan terhadap tertuduh ini.

[8] The trial judge's statement supplied above is equally confusing. To avoid falling into the same pitfall let us sift through the notes of proceedings starting with p 86 of the records of appeal (Volume 2, Part 1):

> Peguam Orang Kena Tuduh:
>
> Memohon tangguhan kes ini kerana ada kes yang serupa yang masih tertangguh dalam peringkat rayuan di Mahkamah Rayuan. Pohon 1 bulan sebutan. *Apa-apa keputusan Mahkamah Rayuan pihak-pihak akan mengambil arahan yang baru*.
>
> (Emphasis added.)

[9] At p 87 of the records of appeal (Volume 2, Part 1) is noted:

> Orang Kena Tuduh:
>
> Mahkamah Rayuan telah tangguhkan kes saya ke 26/3/98. Oleh itu pohon tarikh sebutan selepas itu.
>
> Pegawai Pendakwa:
>
> Pohon 1 bulan sebutan kerana dengan *keputusan rayuan itu akan dirujuk kembali kepada Timbalan Pendakwa Raya*.
>
> (Emphasis added.)

[10] At p 34 of the records of appeal (Volume 2, Part 1) is recorded:

> Pegawai Pendakwa:
>
> … Oleh itu prosiding dalam kes ini bergantung banyak kepada keputusan kes itu. Peguam Orang Kena tuduh pohon tangguhan kes ini untuk tunggu keputusan kes itu. Pendakwa juga tiada bantahan dan sokong. Masa akan

A dijimatkan dalam kes ini jika keputusan Mahkamah Rayuan itu diberikan. Kalau rayuan memihak pembelaan kes mungkin akan ditarik balik. Kalau kes memihak kepada pihak pendakwaan ia juga akan beri kesan kepada kes ini kepada pihak pembelaan.

B

[11] To reiterate, the appellant's argument was altogether unclear to this panel whether this agreement, if it existed, meant that if the conviction of the *first case* were upheld by the Court of Appeal, the appellant would have to serve his sentence and not resist further, or the prosecution would let the C matter rest if the appeal were allowed, or not affect the charge in the current appeal or whether the agreement was in relation to the current appeal, in that if the appellant were acquitted in the *first case* the prosecution would not proceed with the prosecution of the present case or some other interpretation. The *first case* refers to Klang's Sessions Court No 2–61–2 of 1994 where the D appellant was convicted by the trial judge upon the charge of forging another firearm licence for a different and distinct charge. The appellant's appeal against the said conviction was decided by the Court of Appeal on 9 May 1998 as reported in *Harun bin Abdullah* [1998] 3 MLJ 1; [1998] 2 AMR 1983 whereby his conviction was set aside. The law then as regards the E standard of proof, at the end of the prosecution's stage, prior to the amendment, as established in *Arulpragasan a/l Sandaraju v Public Prosecutor* [1997] 1 MLJ 1; [1997] 1 AMR 329, was beyond reasonable doubt. The sessions court judge had caused an incurable misdirection when she assessed the evidence based on the standard of prima facie.

F

[12] On a finding of fact having read the notes of proceedings, we were satisfied that at no time did the prosecution state that whatever the outcome of the appeal of the *first case*, the current matter under appeal would not be proceeded with. The prosecution then was conducted by a police officer and G he certainly has no authority to decide whether a case ought to be withdrawn or otherwise. No evidence was adduced by the appellant to establish that the prosecuting officer had been ordered to say all that had been suggested by the appellant.

H **[13]** In the course of the hearing here and below, the prosecution had submitted that even if there was an agreement as alleged by the appellant, s 115 of the Evidence Act 1950 which relates to estoppel does not apply in criminal cases. Section 115 reads:

I 115 When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing.

[14] What is estoppel in the context of the above section in relation to a criminal case then? Suffice if I merely refer to *Black's Law Dictionary* which sufficiently defines it as follows:

> '*Estoppel*' means that party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly.
>
> … A principle that provides that an individual is barred from denying or alleging a certain fact or state facts because of that individual's previous conduct, allegation, or denial. A doctrine which holds that an inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another.
>
> … Estoppel is a bar or impediment which precludes allegation or denial of a certain fact or state of facts, in consequence or previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. It operates to put party entitled to its benefits in same position as if thing represented were true.

[15] As the above definition illustrates, in the context of s 115 of the Evidence Act 1950, and by due construction of it, estoppel there means that a person, in relation to a criminal case the public prosecutor, is barred from denying or alleging a certain fact or state facts pursuant to a previous declaration, act or omission. It is a doctrine which holds that an inconsistent position, attitude or course of conduct that is not permitted to be adopted as it may cause loss or injury of another, and with that doctrine operating to put a party entitled to its benefits in the same position as if things represented were true. And this doctrine which is a general principle of law applies equally to all classes of cases (*Field's Commentary on the Law of Evidence* (12th Ed 2002) Vol 5 p 4384).

[16] With case laws being unavailable, by necessity, we have to advert and construe the very provision in order to arrive at a proper construction of the above s 115. The latter provision is from an Act that defines the law of evidence. Section 2 of this Act promulgates that the Act 'applies to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator'.

[17] *Black's Law Dictionary* defines 'judicial proceedings' as follows:

> Judicial Proceeding
>
> — Any proceeding wherein judicial action is invoked and taken.
>
> — Any proceeding to obtain such remedy as the law allows. Any step taken in a court of justice in the prosecution or defense of an action. A general term for proceedings relating to, practiced in, or proceeding from, a court of justice; or the course prescribed to be taken in various

A cases for the determination of a controversy or for legal redress or relief. A proceeding in a legally constituted court. A proceeding wherein there are parties, who have opportunity to be heard, and wherein the tribunal proceeds either to determination of facts upon evidence or of law upon proved or conceded facts.

B

[18] It is quite obvious that a criminal trial, which invariably is conducted in open court, certainly falls within the ambit of judicial proceedings, let alone it is not a trial conducted by affidavits or presided by an arbitrator. On
C that premise, with it falling squarely within the folds of the terms 'judicial proceedings', it must follow that s 115 of the Evidence Act 1950 is equally applicable to criminal trials. That criminal trial likewise will fit equally comfortably under the terminology of 'proceeding' as legislated in s 115 itself. If not for the restrictions of s 2, which are irrelevant to criminal proceedings
D as clarified above, there are no identifiable provisions in the Evidence Act that state that the principle of estoppel in the context of s 115 of the Evidence shall be inapplicable to criminal proceedings.

E **[19]** It requires a brave and perhaps inexperienced deputy public prosecutor to utter that whatever he declared or promised earlier on behalf of the public prosecutor does not bind the latter. To accept that assertion will make the public prosecutor a larger than life person and unaffected by any sense of conventional wisdom and conscience. It will be a dark day if a public
F prosecutor's words have no finality and may be 'broken' without any compunction. Imagine a hypothetical case of an accused person, who in the pendency of an appeal, destroys his purchase bill, which he had diligently kept as evidence to counter a charge of illegal possession of stolen badminton rackets, just because the deputy public prosecutor had declared that the latter
G charge would be withdrawn, regardless of the outcome of the pending appeal case. Later the promise is reneged and he ends up being charged. Unless the public prosecutor is estopped from reneging his previous promise, this hypothetical accused person would face certain conviction, on account of his blind trust of the words of the officer.

H

WHETHER A CONVICTION COULD STILL BE MAINTAINED WITHOUT THE CAUTIONED STATEMENT

[20] This issue came about as the appellant had complained that the
I cautioned statement, which was an important piece of evidence in the *first case* against the accused, should not have been reused in this appeal. In that *first case*, the charge involved another complainant ie one Lee Poh Sin. The prosecution before us denied that the Court of Appeal had made any findings with regard to the cautioned statement (P54), and further added that the

learned sessions court judge in fact did not make any reference to the said cautioned statement, despite having accepted it as evidence. The High Court judge concluded that the cautioned statement that had been acted upon in the previous case could still be tendered as evidence in other cases involving the appellant, subject of course, to the established procedures and rules relating to its admissibility.

[21] The appellant did complain that with the acquittal of the appellant in the *first case* then the cautioned statement could not be used again on the basis of the principle of res judicata. This principle is no less applicable to criminal than civil proceedings and relates to a plea by an aggrieved person, complaining of a prior proceeding, which had been concluded with a judicial determination of an issue, but raised again in a subsequent proceeding against the same person. It must be understood that in all criminal cases, say acquittal, that verdict is binding and conclusive in all subsequent proceedings and the aggrieved accused person can raise that principle and accordingly rely on that acquittal (*Sambasivam v The Public Prosecutor, Federation of Malaya* [1950] MLJ 145). Here the cautioned statement was merely part of the prosecution's chain of evidence, adduced in the course of the *first case* and involved no judicial determination of it, except of its voluntariness in the trial within a trial. We found no error here to disentitle the court from using the same cautioned statement, as a separate trial within a trial was carried out for the current case, and it already has been held to be admissible. We were also satisfied that the cautioned statement is admissible for this case.

[22] Let us sift the evidence and see whether a conviction could still be sustained even without the cautioned statement. The prosecution's case was that an investigation against the appellant started in April 1994, after a police report was lodged by one chief inspector Azman Shahrin (PW1) regarding a forgery case of arm's licence, where the signatures of certain officers had been forged. The investigation carried out led to the arrest of the appellant on 3 May 1994. At that material time he was the chief clerk and the officer in charge of arms' licence dealings at the Ibu Pejabat Polis Daerah Kuala Selangor.

[23] Investigations carried out on P5 ie the file pertaining to the impugned gun licence applications, carrying the name of Ng Yah Hai (PW2), which is the subject matter of this present appeal was found to contain documents that were forged. The net result was that PW2 could now buy a gun and ammunitions permitted by a licence carrying the No B113824 (P5F) forged by the appellant.

[24] Evidence was adduced that the required procedures regarding the application for obtaining a firearm and ammunitions were not followed. It

A was also testified that no record of P5, together with all the documents and minutes in the fail, were found at the Kontingen Police Selangor Shah Alam, the final approval body for PW2's application.

B **[25]** PW2 testified that RM17,000 was handed over to the appellant to obtain a firearm licence. Chief inspector Razalli (PW4) testified that seals used for approval of the firearm's application was seized from the appellant's home. The signatures of officers involved with the application by PW2 viz of PW5, PW7, and PW13 were confirmed to have been forged. The Kuala C Selangor OCPD, Abdul Razak Bin Abd Ghani (PW5) confirmed that the writing on the file (P5) was that of the appellant. He also confirmed that the signatures on that file were not his. He denied signing the impugned licence (P5F).

D **[26]** The signature on P5F which was the replacement licence of '*lesen membeli atau memperolehi atau menukar senjata dan peluru*' for PW2 was also confirmed by the expert witness ie PW12 as a forgery. He confirmed that the writings on P5, and of the officers namely PW5 and PW13, were different E and in fact matched the writing of the appellant. The prosecution's witnesses PW5 and PW9 testified that all the writings in the minutes and the documents in P5 were that of the appellant. In other words the evidence against the appellant was overwhelming.

F **[27]** The appellant had submitted that Ng Yah Hui (PW2), the principal prosecution witness, was an accomplice whose evidence was unreliable and unworthy of credit. The prosecution viewed it differently in that SP2 was not an accomplice. Further, as the charge against the appellant was forgery and not cheating SP2 there was thus no requirement of corroboration. Even if G SP2 were an accomplice, this did not mean that SP2 evidence could not be used vide s 133 of the Evidence Act. As it were, we had the opportunity to go through the evidence and were satisfied that PW2's credibility had not been successfully discredited, and as such his evidence remained good.

H **[28]** Section 133 of the Evidence Act reads:

> 133 An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

I

[29] Regretfully for the appellant the learned judge also concluded that SP2 was not an accomplice, for the charge against the appellant was one of forging or falsifying the specific document, of which at all relevant times was well

within the custody and knowledge of the appellant and none others. Having sifted the evidence we found no evidence to show that the judge's factual finding on this issue was erroneous.

[30] Having gone through the evidence we had to agree with the prosecution that even without the cautioned statement a conviction could still be sustained. Based on all the above reasons we had dismissed the appeal both on conviction and sentence.

Appeal dismissed both on conviction and sentence.

Reported by Mashrifah Ravendran